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In the Matter of)	WT DOCKET NO. 94-147
)	
JAMES A. KAY, JR.)	
)	
Licensee of one hundred sixty)	
four Part 90 licenses in the)	
Los Angeles, California area)	

O R D E R

Issued: March 03, 1995 ; Released: March 06, 1995

1. This is a ruling on a Petition For Leave To Intervene that was filed on February 17, 1995, by Viking Freight System, Inc. ("Viking"). An Opposition was filed on February 23, 1995, by James A. Kay, Jr. ("Kay").¹ There has been no responsive pleading filed by the Wireless Telecommunications Bureau.

2. Viking describes itself as a local freight carrier which operates in the western United States, including California. Viking represents that it uses licensed mobile radio facilities in its business operations and that it uses these facilities in the same areas as Kay's authorizations. It is alleged that the radio spectrum in California's metropolitan areas, and particularly in the Los Angeles area, is highly congested and a scarce resource.

3. Viking notes that it is precluded from expanding to meet business growth to the extent that allocated spectrum is assigned to others, including Kay. Viking further notes that the Hearing Designation Order (FCC 94-315 released December 13, 1994 and Erratum mimeo 51344 released December 23, 1994) alleges, inter alia, that Kay has falsely reported the number of units that he serves, may have failed to construct or destructed licensed facilities, may be avoiding channel sharing through inflated reports of loading, may be wilfully causing signal transmission interferences, and may be conducting schemes to obtain control and assignments of licenses issued to others. Such activities, if proven by the evidence, could have adversely effected Viking's past and future business opportunities. However, Viking does not allege a specific wrongdoing regarding which Viking has any information.

4. It appears that Viking wants to be in a position to obtain any frequencies now owned or controlled by Kay that may be freed up in the event that the outcome of this proceeding is adverse to Kay. On that basis, Viking

¹ This is a revocation case pursuant to an order to show cause which shall accord with the practice and procedure prescribed in Part I (Practice and Procedure), Subpart A (General Rules of Practice and Procedure) and Subpart B (Hearing Proceedings). See 47 C.F.R. §1.91(d). Kay relies on the filing periods provided under §1.45 in Subpart A. But Subpart B provides specific times for filing oppositions and replies (where authorized) in Commission adjudicative hearings. See 47 C.F.R. §1.294. It is Subpart B which applies here and Kay's Opposition was filed timely under §1.294(b).

seeks a limited participation as party-intervenor that would permit it to position itself for the possibility of acquiring some frequencies that are licensed to Kay but without disrupting the proceeding. In fact, Viking declines to participate in any discovery. Viking would only ask to be served with "all official filings" and with copies of the Presiding Judge's Orders and with copies of the parties' pleadings. Viking also intends to conduct cross-examination of witnesses and to submit proposed findings of fact and conclusions of law.

Discussion

5. Viking seeks to intervene in this case under the Commission's discretionary standard of 47 C.F.R. §1.223(b). In order to qualify for intervention under the rule, Viking must show how Viking's participation in the proceeding "will assist the Commission in the determination of the issues." Id. Here the interest of Viking in the outcome of this case appears merely to be the fortuitous chance that it may obtain additional frequencies for expansion. The interest that Viking seeks to represent is too speculative to support a petition for intervention. Cf. Hertz Broadcast of Birmingham, Inc., 46 F.C.C. 2d 351 (Review Bd. 1974) (creditor of licensee denied intervention) and Minnesota Microwave, Inc., 2 Radio Reg. 2d (P&F) 269 (Comm'n 1964) (prospective customer's interest is too speculative to be a basis for party status).

6. In addition, in order for Viking to succeed in its request it would need to show that it had knowledge of the facts that are being litigated or that it would gain knowledge of the facts or show that it would have some otherwise unavailable capability or expertise. There must be a justification shown for the time that would be allotted to Viking to cross examine witnesses and to file proposed findings which would need to be addressed by the Bureau and the Presiding Judge and perhaps to later file exceptions which would need to be considered by the Review Board and the Commission. It cannot be determined from Viking's Petition or from the accompanying Declaration of its principal Connie Dilitto whether Viking can make a decisionally significant contribution to this case. It becomes even more doubtful with Viking's stated refusal to participate in discovery.

7. Since there has not been a proper showing, it is concluded that Viking's participation would not materially assist the determination of the issues in this case. The Commission has held:

It would seem reasonable, particularly in a prosecutory-type proceeding where the agency has the burden of proof, to require a substantial showing of special circumstances in order to justify intervention by parties who are otherwise strangers to the proceeding. Such showing would require that the intervenors raise substantial issues of law or fact which have not or would not otherwise be properly raised or argued; and that the issues be of sufficient import and immediacy to justify granting the petitioner the status of a party.

Victor Muskat, 22 Radio Reg. 2d (P&F) 1001, 1003 (Comm'n 1971). Viking has failed to meet those Commission standards.

Rulings

IT IS DETERMINED that Viking Freight Systems, Inc. has failed to establish a basis under Section 1.223 [47 C.F.R. §1.223] for intervention as a party in this case.

Accordingly, IT IS ORDERED that the Petition For Leave To Intervene filed on February 17, 1995, by Viking Freight Systems, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Richard L. Sippel", is written over a horizontal line.

Richard L. Sippel
Administrative Law Judge